

Finding the Answers to Legal Questions

SECOND EDITION

Virginia M. Tucker

Marc Lampson

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FOREWORD

This book—*Finding the Answers to Legal Questions*, Second Edition, by Tucker and Lampson—takes on a new sense of urgency and importance right now as I write this foreword in 2017. Starting last year and continuing (if not accelerating) in 2017, we see serious and widespread attempts by those in power (and those who seek to gain or wield power) to undermine what we know to be highly accurate, reliable, and authoritative sources of information. We see deliberate attempts to blur the lines between previously widely accepted and validated sources and those from the fringe. We see efforts to legitimize what serious information professionals know to be radical and biased sources and to undercut those that have earned long-standing reputations for trustworthiness. It's not an exaggeration to say that the very nature of credibility of information and the public trust are threatened.

Adding to this threat are the deliberate actions at the federal level to make less accessible or even remove valued and useful information sources from government websites aimed at the general public. The pervading goal and directive has shifted—from openness and ease of access to limited or no access.

In my foreword to the previous edition of this book, I focused on the concept of “information is power,” and the importance of being able to find and use high-quality, reliable, in-depth information. I wrote that this was . . . “particularly salient in the legal domain. Today, the most common, first-choice information-seeking strategies are to ‘Google’ and to consult Wikipedia. While these tools may be sufficient for general topics such as identifying people, places, things (including products and vendors), they frequently lack the credibility and depth necessary for resolving legal or government-related problems or questions.” I went on to point out how difficult it is for most of us, including librarians and other information professionals, to navigate through the various legal information systems and services. This is as true today as then; however, we now have the added burdens of countering attempts to discredit sources as well as to restrict access.

As citizens, we should not allow this to happen. And, as librarians and information professionals, we have a special responsibility to act—to serve, provide, and facilitate access—and to resist every effort to limit the public's right to information. I'm pretty sure that Tucker and Lampson had no idea about what was

to come when they began to update and revise this book. But, I am certainly glad that they have updated the material—ensuring that it is current, relevant, and credible. Previously, I referred to this book as “highly useful and practical.” Now, I add to that—essential!

This book is essential for every public library and community information outlet in the United States. And, in a time when powerful forces seek to undermine the legitimacy and credibility of established information sources and when our own government tries to narrow access and provide less, it may not be an exaggeration to say that it is essential to every American household that values law, fairness, and freedom. Read, use, and even buy this book! I plan to.

MIKE EISENBERG

Dean Emeritus and Professor Emeritus
Information School, University of Washington

PREFACE

We wrote *Finding the Answers to Legal Questions*, Second Edition, for all the librarians, paralegals, and law students who are at the frontlines, assisting people with questions about the legal system and about their specific legal information needs. We know from several decades of combined experience the challenges faced by laypersons in learning how to formulate questions that involve the legal system, and then in finding and using the resources needed to answer those questions.

Where do people go to get answers to their legal information questions? If they don't have an attorney, how do they learn to navigate the court system or prepare pleadings to file with a court? Where do they turn when they need to translate legalese into language they can understand? People find sample forms in stationery stores, do-it-yourself booklets, software packages, and innumerable websites of varying value and relevance, but how does a person know where to start? How does the average person become familiar with the workings of the local court and its rules and processes? Some communities offer free legal clinics staffed by lawyers and law school students volunteering their time, others provide legal services based on income level, and still others have court-provided facilitators (paralegals) to assist with paperwork. And, all across the country, people call on their public libraries with questions involving legal information. Small to medium-sized public libraries are unlikely to have staff with legal experience or much in the way of reference materials to assist these patrons.

AUDIENCE AND PURPOSE

Finding the Answers to Legal Questions, Second Edition, is intended for librarians, beginning law students, and paralegals who need an understanding of legal information, its structure, and how to find answers. The book is particularly recommended for public library staff faced with reference questions involving legal information and dealing with challenges of providing a basic legal reference collection. The focus here is on public libraries that are of small to medium size; large public libraries may have legal reference staff or even their own law libraries

within an extended library system. The book is not aimed at law library staff who are familiar with legal research and the legal system and who often have legal experience or education.

The book is also appropriate as a course textbook for students who need to be conversant with the U.S. legal system, the workings of the courts, and common questions that are likely to arise. This includes beginning law school students and paralegals needing an introduction to the justice system, legal research, and many of the most frequently encountered demands for legal information.

In short, the audience for this book includes:

- librarians and library staff at public libraries providing reference services and encountering questions about legal information;
- students preparing for a career in public libraries;
- law and paralegal students learning the basics of legal research; and
- members of the general public looking for legal information.

The four major aims of this book are:

1. to provide a general introduction to the structure of the legal systems in the United States;
2. to provide an overview of the most used legal information sources on the federal, state, and local levels, in all formats;
3. to provide a guide to finding legal information about the most frequently encountered legal problems faced by laypersons; and
4. to provide a guide for collecting and managing basic legal resources in the context of a public library.

HOW TO USE THIS BOOK

The book is organized into four parts, with three appendixes:

■ Part I, “Foundation: Legal Information Overview”

Part I explains the structure of U.S. legal systems as reflected in the structure of legal information resources. It begins with background information to establish a basic understanding of what is meant by codes, statutes, laws, and regulations. The chapters provide an overview of primary law—statutes, regulations, and case law—and explain how secondary sources can help the novice legal researcher. Recommendations and how-to instructions are included for finding primary law in print sources, free websites, and pay-for-view databases.

■ Part II, “Preparation: Understanding Legal Information Needs”

This part begins with a discussion of the complexities of the reference interview when legal information is involved. Librarians can provide legal information but cannot provide legal advice, and library patrons trying to do their own legal work will frequently ask for “advice.” The librarian’s role is that of navigator, not advisor or advocate. Part II introduces the reader to basic legal research, including

citation and keyword searching as well as issues such as jurisdiction and checking for the most current information. Part II continues with coverage of resources beyond the public library, such as legal aid organizations, and considerations when choosing a lawyer.

■ Part III, “Information: Specific Legal Questions”

Part III describes common questions or information scenarios typically encountered by laypersons seeking legal information. Throughout this section it is essential to keep in mind that state and local statutes and court rules will vary, and this book cannot address each jurisdiction.

The eight chapters in Part III each cover an area of law that generates the questions most frequently asked by people trying to do their own legal work. Each chapter typically includes the framework for the area of law (whether it is governed by state or federal law, for example, or a combination), a “getting started” section (what a person needs to know to begin finding answers in that area of law), frequently asked questions and helpful ideas for finding answers, and “resources recaps,” summarizing important print and online sources covered in individual sections or the chapter overall.

The questions in Part III were determined through a combination of the authors’ experiences and an informal survey of reference librarians at public libraries. There seems to be general agreement on the most commonly asked legal questions: “When American families are asked to describe their legal needs, the topics that come up repeatedly are housing, personal finance, family and domestic concerns (usually in conjunction with divorce and child support), wills and estates, and employment-related issues” (White, 2009, p. i).

■ Part IV, “Collection: Building a Basic Collection or Website”

Part IV is intended for public library staff wanting to create a basic website, or perhaps just a single webpage, with links to relevant legal information for their local community. It also provides advice on how to build a small hard-copy collection at minimal cost. The first two chapters cover print sources that are not available online or in pay-for-view databases and discuss the general nature of free legal information on the Internet—megaportals, law school library sites, public library sites—and how it differs from what is included in pay-for-view databases like LexisNexis and Westlaw. These chapters provide tips on how to sift through and evaluate self-help law books and websites, often an intimidating array and host to unique concerns such as jurisdiction, relevancy, bias, and authenticity. The final chapter provides how-to information for creating a basic website of legal links and building a small, low-cost collection of print resources.

■ Appendixes

Three appendixes, two at the back of the book and one online, supplement the legal sources described in the book. Appendix A is a glossary of legal terms that are highlighted in **boldface** throughout the book. Appendix B summarizes the most essential, go-to every time legal resources available for free online that are discussed throughout the book. These resources include case law, federal

statutes and regulations, court rules, tribal law, legal forms, and more. Appendix C, accessible on the book's companion website, www.GetLaw.net, is a directory of free online resources for legal information from all 50 states and the District of Columbia. It collects in one website the URLs for free online sources for state statutes, regulations, courts, and case law. Access to the three appendixes and selected chapter resources can be found at the companion website, www.GetLaw.net.

Finding the Answers to Legal Questions offers a unique approach to legal information and legal research. With a wealth of recommended legal resources, organized for efficient lookups, and its focus on the needs of the generalist reference librarian, paralegal, starting law student, and interested layperson, this book provides practical suggestions to help you understand the legal system, locate appropriate resources, and quickly find answers to legal questions.

ALWAYS REMEMBER

Legal Advice versus Legal Information

Many library users do their own research. Some do it to learn how to represent themselves, and some do it to be more knowledgeable in working with an attorney they may retain to help them with their legal matters. This latter course of action is highly recommended; in addition to doing one's own legal research, one should consult with an attorney if at all possible either for a one-time consultation or for representation. Just as a person might look on the Internet for information about a prescription drug or a surgical procedure, this would be no substitute for the advice of a physician.

A person who is a defendant in a criminal case, especially when that person's liberty is at risk, is strongly advised to seek legal counsel and to seriously question whether self-representation is wise.

REFERENCE

White, H. F. (2009). Foreword. In *American Bar Association Guide to Resolving Legal Disputes*. Chicago: American Bar Association.

ACKNOWLEDGMENTS

Acknowledging those who have been a part of this second edition of *Finding the Answers to Legal Questions* is a privilege. No book—particularly a book about finding information—is ever the result of one person’s thoughts and ideas. This one is no exception.

Our heartfelt thanks go to Amy Harris, our graduate student assistant who completed a special studies assignment in support of this book. Her work updating the book’s companion website for this second edition of the book was invaluable. Chasing down broken and elusive site links sent her down many rabbit holes; her perseverance and good cheer are reflected throughout.

Then there are the many questioners over the years—the patrons at the public law libraries where we have worked, the laypersons, attorneys, courthouse staff, and jail inmates—without whom there would be no quest for answers at all. Virginia is especially grateful to the legal community of Bellingham, Washington, where I served for over ten years as County Law Librarian. It is a community of outreach to the many who need assistance with legal questions and legal matters. Both the Whatcom Dispute Resolution Center and LAW Advocates in Bellingham are shining examples of non-profit mediation and legal aid services, and I am pleased to have been able to serve in a small way within those organizations. Their volunteers and staff are making this world a better place.

My students in the MLIS program at San José State University’s School of Information have also been a part of this book. They never cease to astound me with their curiosity and commitment to the information profession; they are its future and, because of their commitment and intelligence, it is a bright one. If finding answers to questions is my craft, then teaching about “finding” is my passion.

—VIRGINIA M. TUCKER

Marc wishes to acknowledge all the hard work of his co-author, Virginia Tucker, in both editions of the book. The book was largely born of her inspiration and has come to completion largely due to her dedication, persistence, and discipline. She also designed the template for what I think are some of the book’s most original chapters, those on the specific topical areas of legal practice. My students

in LIS programs, paralegal programs, and law schools over the years have also contributed to the book by teaching me better how to convey the complexity of finding legal information.

—MARC LAMPSON



FOUNDATION

Legal Information Overview

Part I is an introduction to the legal system in the United States, explaining the connections between the structure of this system and the structure and organization of legal information. The chapters provide an overview of primary law—statutes, regulations, and case law—and also how secondary sources can help the novice legal researcher. Recommendations and how-to instructions are included for finding primary law in print sources, free websites, and pay-for-view databases.

Chapter 1: The Structure of the Legal System in the United States

Chapter 2: Secondary Sources and Practice Materials

Chapter 3: Federal Primary Sources



The Structure of the Legal System in the United States

GETTING STARTED FINDING LEGAL INFORMATION

Only a third of American adults polled recently could name the three branches of government; another third could not name even one branch of government. (Mary Fairhurst & Bob Graham, “Do you know the branches of government? Program could help kids learn civics,” *Seattle Times*, August 5, 2016, available at www.seattletimes.com/opinion/do-you-know-the-branches-of-government-program-could-help-kids-learn-civics/). If you are looking for legal information, it will help you a great deal to learn or be reminded about the three branches of government, what they do, what kind of law they make, and how our legal system is organized generally. Legal information is organized in a way that reflects the structure of the legal system, and this organizational structure is the subject of this chapter.

FIFTY-ONE LEGAL SYSTEMS

We say “the” legal system, but really there are *at least 51* different legal systems in the United States: the federal legal system is one, and the legal systems in each state are the other 50. These systems exist entirely separate from one another. Of course, there are times when you need information from both the federal and state systems, but usually the first step is to decide which legal system governs the legal problem you are researching. Deciding this question concerns the problem of **jurisdiction**, and Chapters 3 and 4 will help you decide whether the federal system or a state system is the proper jurisdiction for your legal question. Once this is

decided, you will want to know what type of law you need and which governmental unit makes that type of law, leading you deeper into understanding how legal systems are organized. The good news is that the structures of the 51 legal systems are often very similar.

THE RULE OF THREES

We often learn about subjects by dividing them into their component parts. To learn about our legal systems, dividing into three parts works in several ways: there are three types of primary law made by three different branches or separate units of government, and these days this law is found in three distinct realms: in print, online, and in pay-for-view databases. This is a bit of a simplification, but it works well as a learning device.

THREE TYPES OF PRIMARY LAW

The three types of **primary law** on both the federal and state levels are **enacted law**, **regulatory law**, and **case law**, (see figure 1.1). The goal of most legal research is to find the primary law that applies to a given legal problem. The legal field distinguishes between primary law and secondary sources. Secondary sources are defined as “commentary about the law” and are thoroughly discussed in Chapter 2. In this chapter the focus is on the three different types of primary law created by three different branches or units of government.

TYPE OF PRIMARY LAW	SUBTYPES
Enacted Law	Constitutions, statutes, ordinances, court rules
Regulatory Law	Administrative rules, regulations, and sometimes administrative decisions in individual cases
Case Law	Cases interpreting statutes and regulations and cases making law in the absences of statutes and regulations (often referred to as “common law”)

FIGURE 1.1 | Types of Primary Law

THREE BRANCHES OF GOVERNMENT

The three branches of government, federal or state, are the legislative, the executive, and the judicial branches. Each branch makes a particular type of primary law (see figure 1.2).

Legislatures Enact Statutes

The type of law that is most often needed to resolve legal questions is the primary law made by the legislative branch: enacted law, often called **statutory law**. Thus,

BRANCH OR UNIT . . .	MAKES ONE TYPE OF PRIMARY LAW . . .	PUBLISHED AS HARD COPY AS . . .
Legislature	Statutes	Session Laws Statutory Codes
Courts	Case law, opinions, decisions	Case Reporters Case Digests
Administrative Agencies (may be part of the Executive Branch, or may be an “independent” governmental agency established by legislature)	Regulations (and sometimes administrative decisions in specific cases)	Administrative Registers Administrative Codes

FIGURE 1.2 | Three Entities and Three Types of Primary Law

the United States Congress enacts federal statutes; state legislatures enact state statutes. On the local level, elected bodies of people, analogous to legislatures, enact local ordinances. The best broad term for this type of law enacted by elected bodies of people is enacted law. **Constitutions** are best considered enacted law, too, because, while not enacted by legislatures, constitutions and information about them can be found in the same places as statutory law. The same is true of court rules.

The legislative branch of government in the federal system is known as a “bicameral” institution, or “two houses,” collectively known as the United States Congress and is composed of the United States House of Representatives and the United States Senate. Those two “houses” of Congress must, usually by a majority vote, agree to enact the same piece of legislation. Once that is done, the president must agree to sign that legislation and when that is done, the legislation becomes “the law,” known as a federal statute.

All states, save one, also have a bicameral legislative branch with two houses similar to the U.S. Senate and the U.S. House of Representatives, though on the state level these two houses may have different names depending on the state. The California Legislature, for instance, is composed of the California Assembly and the California Senate. Whereas in Georgia the two houses are known collectively as the Georgia General Assembly, consisting of the Georgia State Senate and the Georgia House of Representatives. Nebraska, by contrast, is the only state to have a unicameral legislature. It consists of only one “house,” called the Nebraska Unicameral Legislature. Regardless of the exact name of the legislative branch, state legislatures act very similarly to the United States Congress in that once the legislature enacts a piece of legislation, it must be signed by the governor of the state and then it becomes “the law,” usually referred to as a “state statute.”

Statutes are published in hard copy first as **session laws** right after they are enacted, and then once they have been categorized by subject—a process called **codification**—they are published in statutory codes. But today, finding state and federal statutes has become increasingly easy as the legislatures have ensured that robust websites publish not only existing statutes but sometimes proposed legislation and historical statutes as well. Usually, finding these sites is a matter of typing the name of the legislative branch into a search engine. Be sure, however,

that the site you find is the “official” site, which will usually have a URL that ends in “.gov,” or sometimes the state abbreviation followed by “.us,” such as “ne.us.”

Administrative Agencies Promulgate Regulations

The administrative agencies of government, which are sometimes part of the executive branch and sometimes independent agencies set up by legislatures, create or “promulgate” regulatory law. These are the rules and regulations that govern how the administrative functions of the government are to be carried out. Rules and regulations are also created on the local level.

Hundreds of administrative agencies exist in the federal system and hundreds exist in nearly every state. These agencies are charged with “administering,” or carrying out the functions of government, from making sure the roads and bridges get built to making sure that children are not living in dangerous, hurtful homes. The agencies issue many regulations about how the agency itself is to function and regulations that govern the area of the agency’s expertise, such as occupational safety and health, or transportation, or labor relations, and so on.

Agency regulations pertain to all of the sectors of society or industry that are administered by the agency. These regulations are therefore said to carry out a “quasi-legislative” function in that the regulations resemble the statutes issued by legislatures. But often administrative agencies carry out a “quasi-judicial” function as well, deciding on individual cases governed by its regulations rather than merely issuing broad-reaching regulations.

The individual decisions about individual cases resemble judicial opinions, which is the reason they are viewed as “quasi-judicial.” These decisions are sometimes published in a publicly accessible way and sometimes not. Sometimes the decisions are sent out only to the individuals involved, and sometimes the decisions are published in hard-copy **reporters** or loose-leaf services. These services are discussed in chapter 2 and, where applicable, in individual chapters on specific legal topics.

The legal researcher will often be looking for administrative regulations and sometimes administrative decisions. Generally, regulations are published in hard copy first as proposed and then as final regulations in administrative registers, and then subsequently in administrative codes arranged by agency or topic. While administrative regulations can be found online, this is not as certain as the online publication of statutes.

Finding administrative decisions in individual cases, however, can be more difficult. The determined researcher may find them in loose-leaf reporters, at the agency itself, or, if necessary, through public record requests. Again, these decisions can increasingly be found online, but it may take some persistence and assistance.

Courts Make Case Law

The judicial branch of government, whether state or federal, issues legal opinions, decisions, or cases. You may also hear it called “judge-made law.” All of these terms are used interchangeably, but in legal research terms it is most often referred

to as **case law**. You will also hear the phrase “**common law**” in reference to case law. Most case law involves the interpretation of enacted law or regulatory law, but when a case decides a legal question where there is no statute or regulation, that is what is more precisely meant by “common law.” The broader term for all judicial decisions is case law.

Case law is published first as **slip opinions** and then in case reporters. Private publishers of case law also summarize the cases and arrange those summaries by subject matter in sets of books called case digests. Chapters 3 and 4 discuss reporters and digests more fully.

The following section explains that not all case law has equal weight and not all of it is published, but case law is usually very important because it most often interprets the law that is enacted by legislatures or promulgated by the administrative agencies, because the meaning of enacted or regulatory law is often ambiguous. The weight or importance of the opinions or decisions issued by the courts varies according to the level of court that writes the opinion.

THREE LEVELS OF COURTS

The rule of threes works well for learning the structure of the court systems in the United States, too. Generally, a court system has three different levels: trial courts, intermediate appellate courts, and final appellate courts (see figure 1.3). The final appellate courts have the highest authority in any court system, and so it is best to think of courts in a hierarchy.

Trial Courts

At the lowest level, and the level with which many laypeople are likely to be concerned, is the trial court level. Trial courts are the type of courts most people are familiar with because they make for good drama on television and in movies. Trial

LEVELS OF COURTS	NAMES OF FEDERAL COURTS	NAMES OF SAMPLE STATE COURTS	FUNCTION
Final Appellate Courts	United States Supreme Court	California Supreme Court	Court of Last Resort—In most cases, parties must petition this court for review; there is no “right” to appeal to this court except in limited situations.
Intermediate Appellate Courts	Court of Appeals	California Court of Appeals	First Level of Appeal—In most cases, parties have a “right” to appeal to this court.
Trial Courts	United States District Courts	County Superior Courts	Fact Finders

FIGURE 1.3 | Three Levels of Courts

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